

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUBEN S. ELPEDES,
Petitioner,

v.

FERNANDO GONZALEZ,
Respondent.

No. C 09-362 MHP (pr)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Ruben S. Elpedes, an inmate at the California Correctional Institution in Tehachapi, filed this pro se action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge a 2007 conviction from Alameda County Superior Court for a lewd and lascivious act with a minor. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

In his petition, Elpedes reports that his conviction was affirmed in 2008 and his petition for review was denied by the California Supreme Court in 2008. Petition, p. 3. After providing that information, Elpedes wrote "N/A" in every other portion of the form petition in which he was requested to provide information. Consequently, his petition omits virtually all the information necessary for this court to decide what to do with it. Most noticeably, Elpedes wrote "N/A" in the portion of the form where he is directed to state his grounds for habeas relief and the facts in support of each ground for relief. See Petition, pp. 5-6. Since he has not written any ground for relief in habeas, his petition fails to state a claim upon which relief may be granted. He will be allowed to file an amended petition to cure this defect. In his amended petition, Elpedes should provide all the information requested of him


1 on the form habeas petition. If his amended petition does not state the grounds on which he
2 claims entitlement to habeas relief (and the facts in support of each ground), this action will
3 be dismissed.

4 In preparing his amended petition, Elpedes should bear in mind three background
5 points. First, this court does not have ready access to any state court files; he must provide
6 all the information necessary for this court to evaluate whether he has any claims that can be
7 considered in a federal habeas action. Second, this court can only consider claims for
8 violations of Elpedes' rights under the constitution, laws or treaties of the United States, see
9 28 U.S.C. § 2254(a), and cannot consider claims for violations of state law. Third, this court
10 cannot consider a claim unless state court remedies have first been exhausted for that claim.
11 The exhaustion requirement means that he must present each and every claim to the
12 California Supreme Court in a petition for review or in a habeas petition to give that court a
13 fair opportunity to rule on the merits of it before this court can consider the claim.

14 For the foregoing reasons, the petition is dismissed with leave to file an amended
15 petition no later than **June 30, 2009**. The amended petition should have this case caption and
16 case number on the first page and should be clearly marked "Amended Petition." Failure to
17 file the amended petition by the deadline will result in the dismissal of this action.

18 IT IS SO ORDERED.

19 DATED: May 27, 2009


Marilyn Hall Patel
United States District Judge